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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/911,341 08/14/97 LEWIS

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EXAMINER

QM12/0720

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LEWIS, A  
ART UNIT PAPER NUMBER

3761

DATE MAILED:

07/20/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

08/911,341

Applicant(s)

R. David Lewis, et al.

Examiner

A. J. Lewis

Group Art Unit

3761

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 5/3/99 (Amendment)
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 111; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-3, 5-9, 14-22 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-3, 5-9, 14-22 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of References Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-3,5-9,16,17,20-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 6, "...the face of a user..." should read --a user's face-- in order to prevent any positive recitations of a human being and/or human anatomy as an element of the claimed combination; in lines 8 and 9, "...the top end..." and "...the bottom end..." respectively, lack proper antecedent basis because the top and bottom of the mask as recited in lines 2 and 3 respectively, lack any mention of a top "...end..." and and bottom "...end..."; in line 15, "...the face of a user..." should read --a user's face-- in order to prevent any positive recitations of a human being and/or human anatomy as an element of the claimed combination; in each of lines 17,18,20, "...the bottom end..." lacks antecedent basis; in line 19, "...the ends..." lacks antecedent basis because the pair of strap portions has not previously been defined as having any ends; in line 21, "...the base of the skull of said user..." should read --a base of a user's skull-- or --a base of such a user's skull--; in line 22, "...the head of said user..." should read --a user's head-- or --such a

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user's head-- in order to prevent any positive recitations of a human being and/or human anatomy as an element of the claimed combination.

In claim 2, line 2, "...the head of a user." should read --a user's head-- or --such a user's head-- in order to prevent any positive recitations of a human being and/or human anatomy as an element of the claimed combination.

In claim 8, line 2, "...the forehead of the wearer..." should read --a wearer's forehead-- in order to prevent any positive recitations of a human being and/or human anatomy as an element of the claimed combination.

In claim 13, line 6, "...the face of a user..." should read --a user's face-- or --such a user's face-- in order to prevent any positive recitations of a human being and/or human anatomy as an element of the claimed combination.

In claim 16, line 7, "...the face of a user." should read --a user's face-- or --such a user's face-- in order to prevent any positive recitations of a human being and/or human anatomy as an element of the claimed combination.

In claim 17, line 2, "...the head of a user." should read --a user's head-- or --such a user's head-- in order to prevent any positive recitations of a human being and/or human anatomy as an element of the claimed combination.

In claim 20, line 6, "...the face of a user..." should read --a user's face-- or --such a user's face--; in line 8, "...the bridge of the nose of said user..." should read --a bridge of a user's nose-- or --a bridge of such a user's nose--; in line 9, "...the chin of said user..." should read --a user's chin--

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or --such a user's chin-- in order to prevent any positive recitations of a human being and/or human anatomy as an element of the claimed combination.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3,8,9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tenna ('092) in view of Harrison et al.('776).

The difference between Tenna and claim 1 is strap means comprising a head piece.

Harrison et al., in a face mask, teach strap means comprising a head piece (14,22 of figs.1-5) having a top end (40) adjacent to the top end of the frame of the mask and a bottom end (30) adjacent to the bottom end of the frame of the mask, a first plurality of straps (16) fixed to said top end of said head piece (14,22) and to the top end of the frame (figs.1-5), a second plurality of straps (16,32) adjustably fixed to the bottom end of said head piece and fixed to the bottom end of the frame so that shortening said second plurality of straps pulls the head piece and causes said face seal to seal against a user's face, said second plurality of straps (16,32) comprises a pair of straps (figs.1-5), said pair of straps comprises a pair of buckles (18,38) fixed to said bottom end of said frame and adjustably received by said buckles, and the ends of said pair of strap portions remote from said bottom end of said frame being disposed adjacent a base of a user's

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skull (figs. 1-2) and extending generally forward and downwardly with respect to a user's head when the strap portions are received respectively by said buckles.

Tenna, (figs. 2,3) appears to illustrate headstraps including a headpiece. To the extent that Tenna may not illustrate/disclose such a headpiece, it would have been obvious to modify the head straps of Tenna to employ a headpiece because it would have provided a means for eliminating high local pressures on a user's head, providing uniform pressure over the back of a user's head and significantly improving comfort as taught by Harrison et al. (col. 1, lines 34-37).

As to claim 2, pad (14) of Harrison et al. appears to be non-stretchable and head conforming; rather straps (16) connected thereto are elastic.

As to claim 3, the head pad (22) of Harrison et al. (fig. 2) appears to be generally rectangular; otherwise, the shape of the head pad of Harrison et al. can be arrived at through mere routine obvious experimentation and observation with no criticality seen in any particular shape including a "generally rectangular shape".

As to claims 8 and 9, the seal (16) of Tenna appears to be of a single thickness throughout including at a forehead portion. It would have been obvious to modify the shape of the forehead portion to be of any desired shape including one extending inwardly of the balance of the seal because, the shape of the seal can be arrived at through mere routine obvious experimentation and observation with no criticality seen in any particular shape including a temple portion which extends inwardly of other portions of the seal.

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5. Claims 5,6,13,16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tenna in view of Harrison et al. as applied to claims 1-3,8,9 above, and further in view of Backlund ('057).

The difference between Tenna as modified by Harrison et al. and claim 5 is a pair of eyeglasses within said face mask and supported adjacent to said nose piece, said eyeglasses comprising a pair of frames including a pair of lenses in said frames, a bridge fixed to said frames for holding the frames with respect to each other, a mounting member carried by said nose cup, and support arms fixed to said bridge and adjustably fixed to said mounting member.

Backlund, in a face mask, teaches a pair of eyeglasses (3,3a) within said face mask and supported adjacent to said nose piece (figs. 1,2), said eyeglasses comprising a pair of frames (3a) including a pair of lenses (3) in said frames, a bridge fixed to said frames for holding the frames with respect to each other, a mounting member (5) carried by said nose cup, and support arms (4) fixed to said bridge and adjustably fixed (i.e. support arms (4) are slidably mounted within slots of the mounting member) to said mounting member.

It would have been obvious to further modify the nose cup of Tenna to employ any well known means for mounting eyeglasses to the nose cup because it would have provided a means for securely accommodating a user's prescription lenses as taught by Backlund.

As to claim 6, the nose cup of Backlund includes a rib (5) on the nose cup defining a longitudinal hole therein, the mounting member including at least one arm (4) slidably receivable within said longitudinal hole.

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As to claim 13, Tenna as further modified by Backlund as discussed above, additionally teaches an upwardly bent mounting member (4) carried by the nose cup. Close inspection of figs. 1 and 2 of Backlund reveals that the mounting member (4) as illustrated in fig. 2 must be bent (upwardly) in order to properly place eyeglasses (3,3a) FLAT against a wearer's face as illustrated in fig. 1 given the acute angle between a wearer's face and the portion of the mounting member (4) which is inserted into slots (5).

As to claims 16, 19, Harrison et al. as discussed above with respect to claim 1, teaches, strap means comprising a head piece (14,22 of figs. 1-5) having a top end (40) adjacent to the top end of the frame of the mask and a bottom end (30) adjacent to the bottom end of the frame of the mask, a first plurality of straps (16) fixed to said top end of said head piece (14,22) and to the top end of the frame (figs. 1-5), a second plurality of straps (16,32) adjustably fixed to the bottom end of said head piece and fixed to the bottom end of the frame so that shortening said second plurality of straps pulls the head piece and causes said face seal to seal against a user's face, said second plurality of straps (16,32) comprises a pair of straps (figs. 1-5), said pair of straps comprises a pair of buckles (18,38) fixed to said bottom end of said frame and adjustably received by said buckles, and the ends of said pair of strap portions remote from said bottom end of said frame being disposed adjacent a base of a user's skull (figs. 1-2) and extending generally forward and downwardly with respect to a user's head when the strap portions are received respectively by said buckles.



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As to claim 17, pad (14) of Harrison et al. appears to be non-stretchable and head conforming; rather straps (16) connected thereto are elastic.

As to claim 18, the head pad (22) of Harrison et al. (fig. 2) appears to be generally rectangular; otherwise, the shape of the head pad of Harrison et al. can be arrived at through mere routine obvious experimentation and observation with no criticality seen in any particular shape including a "generally rectangular shape".

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tenna in view of Harrison et al. and Backlund as applied to claims 5,6,13,16-19 above, and further in view of Wise et al. ('640).

The difference between Tenna as further modified by Backlund and claim 7 is a block carried by said support arms, said block defining holes therethrough for slidably receiving said mounting member.

Wise et al., in a face mask, teach a block (6) carried by said support arms (2), said block defining holes (7) therethrough for slidably receiving said mounting member.

It would have been obvious to further modify the mounting member of Tenna as further modified by Backlund to employ any well known type of slidable mounting member including one having a mounting block because it would have provided a means for releasably locking the support arm into any one of a plurality of positions within the slots as taught by Wise et al..

7. Claims 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tenna ('092) in view of Warncke ('219).

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The difference between Tenna and claim 20 is a portion of the bottom end of the nose cup being cut away.

Warncke, in a nose cup within a face mask, teaches a portion of the bottom end of the nose cup being cut away for the purpose of separating an inlet opening from the exhalation discharge and speaking membrane (col.1, lines 43-60).

It would have been obvious to modify the nose cup of Tenna to provide it with any well known shape including one having a cut out portion in the bottom because it would have provided a means for separating an inlet opening from the exhalation discharge and speaking membrane as taught by Warncke (col.1, lines 43-60).

As to claims 21 and 22, the shape of the opening in the bottom end of the mask of Warncke appears to be V-shaped with its edges being joined together at the apex of the V-shape at the bottom of the nose mask.

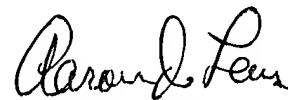
***Response to Arguments***

8. Applicant's arguments with respect to claims 1-3,5-9,16-22 have been considered but are moot in view of the new ground(s) of rejection.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron J. Lewis whose telephone number is (703) 308-0716.

Aaron J. Lewis

July 16, 1999

  
Aaron J. Lewis  
Primary Examiner